

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA and

STATE OF TEXAS,

Plaintiffs,

v.

HARRIS COUNTY MUNICIPAL UTILITY
DISTRICT NUMBER 50,

Defendant.

Civil Action 4:00-cv-01931

**AGREEMENT AND ORDER REGARDING MODIFICATION OF THE
CONSENT DECREE**

Pursuant to the terms of the Consent Decree entered by the Court on September 22, 2000 (Dkt. No. 12) (“the Consent Decree”), the Parties have agreed to modify certain provisions of the Consent Decree as set forth in this Agreement and Order Regarding Modification of the Consent Decree (“Consent Decree Modification”). Pursuant to Paragraph 74 of the Consent Decree, the Parties hereby file this modification with the Court and request that the Court approve and enter this proposed Consent Decree Modification.

BACKGROUND

A. On June 6, 2000, the United States of America filed its Complaint in this action. Dkt. No. 1 The Complaint was brought under Clean Water Act (“CWA”) Section 309, 33 U.S.C. § 1319, against Defendant Harris County Municipal Utility District No. 50 (“HCMUD50”) for the discharge of pollutants in violation of CWA Section 301, 33 U.S.C. § 1311, and for the violation of Administrative Orders issued under CWA Section 309, 33 U.S.C. § 1319.

B. On June 15, 2000, the State of Texas filed a Crossclaim and a Motion to Realign the State of Texas as Plaintiff (“Motion to Realign”). Dkt. Nos. 4 & 5. In its Crossclaim, Texas

sought civil penalties, injunctive relief, and attorney's fees and costs against HCMUD50 pursuant to Sections 7.105 and 7.102 of the Texas Water Code. Dkt. No. 5. On June 16, 2000, the Court granted the Motion to Realign. Dkt. No. 7.

C. The claims in this civil action by Plaintiffs the United States and the State of Texas related to a publically owned treatment works ("POTW") used to collect and treat sewage that is owned and operated by HCMUD50. HCMUD50's POTW included a sewage treatment plant ("the Treatment Plant") and a sewage collection and transmission system ("the Collection System") used to collect sewage and convey it to the Treatment Plant. The Treatment Plant discharged treated sewage via Outfall 001 into Ricketts Gully and thence to the San Jacinto River. In 1987, the U.S. Environmental Protection Agency ("EPA") had issued to HCMUD50 a CWA permit for the Treatment Plant, known as a National Pollution Discharge Elimination System or NPDES permit, authorizing discharges from Outfall 001. The 1987 NPDES permit set various conditions including effluent limitations specifying the maximum allowable level of certain pollutants in the discharge from the Treatment Plant.

D. In the Complaint and Crossclaim, Plaintiffs alleged that HCMUD50 violated and continued to violate the CWA and the Texas Water Code as follows:

i. The 1987 NPDES permit expired in 1991 and, after expiration, HCMUD50 discharged pollutants from the Treatment Plant without an NPDES permit, discharged pollutants that exceeded the effluent limits in the expired 1987 NPDES permit and in a state issued water discharge permit, and bypassed part of the treatment works and discharging sewage that had not been fully treated.

ii. HCMUD50 discharged sewage from unpermitted locations in the Collection System such as manholes and cleanouts—such discharges are referred to in the Consent Decree as an Unauthorized Discharge (§ 11(r)).

iii. HCMUD50 failed to comply with the administrative orders issued by EPA.

E. Under the Consent Decree, HCMUD 50 was required to pay civil penalties (§§ 31 & 32) and agreed to be liable for stipulated penalties for violations specified in Section XV (Stipulated Penalties).

F. The Consent Decree also required HCMUD50 to implement five remedial measures using a qualified consultant:

i. Cross Connections: Inspect and eliminate cross connections (meaning any physical connection between any part of the Collection System and any part of a drainage system used to handle stormwater). Consent Decree at §§ 11(g) & (j) and 13.

ii. Preventive Maintenance Program: Develop and submit to EPA for approval a Preventive Maintenance Program designed to ensure proper operation and maintenance of the POTW. Consent Decree at § 15.

iii. Sewer Overflow Action Plan: Develop and submit to EPA for approval a Sewer Overflow Action Plan designed to ensure that, should an Unauthorized Discharge occur, the volume of untreated wastewater discharged to the environment and the impact of the discharge on the environment and public health will be minimized. Consent Decree at § 16.

iv. Comprehensive Collection System Remedial Program: Submit to EPA for approval a completed Sanitary Sewer Evaluation Study (“SSES”) identifying the causes

of Unauthorized Discharges. After EPA approval of the SSES, submit to EPA for approval a Remedial Measures Action Plan (“RMAP”) specifying remedial measures and schedules for completion of measures that will eliminate Unauthorized Discharges (including addressing various conditions that cause or contribute to such discharges). The proposed schedule was to provide for completion of the remedial measures specified in the RMAP no later than April 1, 2005. Consent Decree at ¶¶ 18, 19, & 23.

v. Treatment Facility Assessment: Submit to EPA for approval a Treatment Facility Assessment assessing the ability of the existing Treatment Plant to treat the present and future anticipated volume of sewage sent to the plant and to meet effluent limits in the applicable CWA permit. The Treatment Facility Assessment was required to include a schedule for improving and/or expanding the Treatment Plant to ensure compliance with permit requirements. The proposed schedule was to provide for completion no later than April 1, 2005. Consent Decree at ¶¶ 24 & 25.

G. With regard to documents requiring EPA approval, the Consent Decree provided that EPA, after consultation with the Texas Natural Resources Conservation Commission (“TNRCC”), would approve or disapprove the document within 60 days of submission and that, should EPA and TNRCC fail to notify HCMUD50 of their approval or disapproval within 60 days, the completion dates for each milestone in the submission, once approved, shall be deemed extended by the number of days beyond 60 that EPA took for such approval or disapproval. Consent Decree at ¶¶ 29 & 30.

H. On September 1, 2002, the TNRCC formally changed its name and began doing business as the Texas Commission on Environmental Quality (“TCEQ”). TCEQ succeeds to all

rights and responsibilities of TNRCC under this Consent Decree and all references to TNRCC in the Consent Decree apply to TCEQ.

I. The Consent Decree required HCMUD50 to submit quarterly reports regarding the status of implementing the remedial measures and monthly reports summarizing unauthorized discharges. Consent Decree at ¶¶ 26 & 27.

J. After the Consent Decree was entered, the HCMUD50 timely paid all required civil penalties to the United States and the State.

K. According to the quarterly reports submitted by HCMUD50 after the Consent Decree was entered, the remedial measures were implemented as follows:

i. Cross Connections: In November 2000, HCMUD50 certified that it had closed or eliminated all known cross connections. As required by the Consent Decree, subsequently identified cross connections were sealed or eliminated--HCMUD50 had identified and closed 95 total cross connections by 2005.

ii. Preventive Maintenance Program: In November 2000, HCMUD50 timely submitted its Preventive Maintenance Program to EPA. HCMUD50 implemented its proposed Preventive Maintenance Program.

iii. Sewer Overflow Action Plan: In November 2000, HCMUD50 timely submitted its Sewer Overflow Action Plan to EPA. HCMUD50 implemented its proposed Sewer Overflow Action Plan.

iv. Comprehensive Collection System Remedial Program: In January 2002, HCMUD50 submitted its SSES to EPA for approval. EPA approved the SSES in August 2002. In September 2002, HCMUD50 submitted its proposed Remedial Measures Action Plan to EPA. HCMUD50 implemented its proposed Remedial Measures Action

Plan. By the end of 2004, HCMUD50 reported that all elements proposed in the RMAP had been addressed in advance of the April 1, 2005 deadline specified in the Consent Decree. HCMUD50 also reported that, despite implementation of the RMAP, Unauthorized Discharges continued and that additional work would be performed including resurveying for cross connections and rehabilitation of lift stations.

v. Treatment Facility Assessment: In November 2000, HCMUD50 timely submitted its Treatment Facility Assessment to EPA. HCMUD50 began implementation of its proposed Treatment Facility Assessment. HCMUD50 made interim repairs and improvements to the Treatment Plant, but determined that its ability to perform major tasks specified in the Treatment Facility Assessment required funding from the Texas Water Development Board for which HCMUD50 had applied but not yet received. Ultimately, the Texas Water Development Board approved and released the funding in 2011 and implementation of the work specified in the Treatment Facility Assessment was completed on August 12, 2013. Except as noted in Background Paragraph P, implementation of this work was sufficient to allow the Treatment Plant to comply with the effluent limits in its NPDES permit.

L. EPA has reviewed the Preventive Maintenance Program, Sewer Overflow Action Plan, Remedial Measures Action Plan, and Treatment Facility Assessment submitted by HCMUD50 and determined, after consultation with TCEQ, that these documents were appropriate for approval under the Consent Decree at the time of submittal.

M. Under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA approved Texas to issue NPDES permits within its jurisdiction effective September 14, 1998. 63 Fed. Reg. 51164 (Sept. 24, 1998). Such permits are referred to as Texas Pollution Discharge Elimination permits

or TPDES permits. In 2001, Texas issued TPDES Permit WQ0011770001 to HCMUD50 for its POTW. That permit remains in effect with a current expiration date of July 1, 2018.

N. HCMUD50 continues to eliminate newly identified cross connections as required by Paragraph 14 of the Consent Decree.

O. HCMUD50 continues to implement its submitted Preventive Maintenance Program and Sewer Overflow Action Plan.

P. EPA and TCEQ have determined that, after implementation of the work specified in the Treatment Facility Assessment, the Treatment Plant is able to comply with the applicable CWA permit except periodic exceedences of limits on daily average flow and average discharge during any two-hour period from Outfall 001 specified in “Effluent Limitations and Monitoring Requirements” item 1 of TPDES Permit WQ0011770001. EPA and TCEQ have determined that the periodic exceedences of these limits on flow from Outfall 001 are caused by conditions in the Collection System that will be addressed through implementation of the Work Plan that is Attachment A to this Consent Decree Modification (the Work Plan) and that no further improvements to the Treatment Plant are required at this time.

Q. All Parties agree that, while the Remedial Measures Action Plan was proposed in good faith, implementation of the measures specified therein did not eliminate Unauthorized Discharges and additional remedial measures for the Collection System are necessary.

R. In August 2011, HCMUD50 met with EPA and described its ongoing efforts to improve its POTW including the Collection System.

S. In December 2013, HCMUD50 completed a Wastewater Master Plan designed to provide a tool to both improve the present conditions of the Collection System and prepare for future service requirements. Consistent with the Wastewater Master Plan, HCMUD50 proposes

to supplement the measures completed under the Remedial Measures Action Plan by implementing the improvements to its Collection System specified in the Work Plan. Under the Work Plan HCMUD50 will make improvements and repairs to its Collection System and will reduce flows to the Treatment Plant by redirecting sewage from specified neighborhoods that are currently serviced by the existing Treatment Plant to a separate Treatment Plant which is to be newly constructed. The schedule specifies that the work required by the Work Plan will be completed by the end of 2016.

T. EPA and TCEQ have evaluated the Work Plan proposed by HCMUD50 and determined that the proposed measures are appropriate measures that are reasonably calculated to eliminate Unauthorized Discharges and exceedences of limits on flow from Outfall 001 specified in “Effluent Limitations and Monitoring Requirements” item 1 of TPDES Permit WQ0011770001.

U. Paragraph 74 of the Consent Decree provides:

The Consent Decree may be modified by written consent of all of the parties or, if the parties cannot agree, by written Order of this Court. Any modification of this Consent Decree by the parties shall be in writing and filed with the Court before it will be deemed effective.

V. The United States and TCEQ have determined that final approval of this Consent Decree Modification requires notice and opportunity for public comments consistent with Consent Decree Paragraph 76.

L. The Assistant Attorney General on behalf of the United States and the undersigned representatives of the State of Texas and HCMUD50 certify that they are fully authorized to enter into the terms and conditions of this Consent Decree Modification and to execute and legally bind such party to this document.

By the signatures of their representatives to this document, the Parties to the 2002 Consent Decree hereby approve the modifications set forth below.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Except as specifically modified herein, all provisions of the Consent Decree shall remain in full force and effect.

2. The Preventive Maintenance Program, Sewer Overflow Action Plan, Remedial Measures Action Plan, and Treatment Facility Assessment submitted by HCMUD50 shall be enforceable under this Consent Decree. HCMUD50 shall be deemed to have complied with the deadlines specified in those documents for purposes of Section XV (Stipulated Penalties).

3. The April 5, 2005 deadline specified in Consent Decree Paragraph 23 for completing the Comprehensive Collection System Remedial Program is hereby modified—the new deadline is December 31, 2016.

4. HCMUD50 shall implement the attached Work Plan according to the schedule set forth therein. HCMUD50 will be liable under Consent Decree Paragraph 39 for failure to timely complete measures required by the Work Plan by the deadline for completing the Comprehensive Collection System Remedial Program specified in Paragraph 3 above (December 31, 2016).

5. Except as provided in this Paragraph, during the period from entry of this Consent Decree Modification until December 31, 2016, HCMUD50 will not be liable for the following stipulated penalties:

- a. Stipulated penalties for Non-Compliant Discharges under Paragraph 40 of the Consent Decree for discharges from Outfall 001 that exceed the limit on daily average flow and average discharge during any two-hour period from Outfall 001

specified in “Effluent Limitations and Monitoring Requirements” item 1 of TPDES Permit WQ0011770001; and

- b. Stipulated penalties for Unauthorized Discharges under Paragraph 41 of the Consent Decree.

If at the time of the particular Non-Compliant Discharge and/or Unauthorized Discharge HCMUD50 is not in compliance with the requirements of the Consent Decree and this Consent Decree Modification, then the exceptions set forth in this paragraph will not be in effect and HCMUD50 will be liable for stipulated penalties under the Consent Decree. Except as specifically provided in this Paragraph, HCMUD50 will continue to be liable for all other stipulated penalties under the Consent Decree. After December 31, 2016, the exceptions set forth in this Paragraph will expire, and, going forward, HCMUD50 will be liable for all stipulated penalties under the Consent Decree.

6. This Consent Decree Modification shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Department of Justice policy and described at 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if comments by the public regarding the Consent Decree Modification disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. This Paragraph does not create any rights exercisable by HCMUD50.

7. Final approval by Plaintiff the State of Texas and entry of this Consent Decree Modification is subject to the requirements of Section 7.110 of the Texas Water Code which provides for notice of the lodging of this Consent Decree Modification in the Texas Register, an opportunity for public comment, and consideration by the State of Texas of any comments. The

State of Texas reserves the right to withdraw or withhold its consent if the public comments regarding the Consent Decree Modification discloses facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. This Paragraph does not create any rights exercisable by HCMUD50.

8. HCMUD50 may not withdraw from the Consent Decree Modification during the pendency of the United States' and the State of Texas' review of the Consent Decree Modification. HCMUD50 consents to the entry of this Consent Decree Modification without further notice. Further, HCMUD50 agrees that it will not oppose the entry of this Consent Decree Modification.


9. The Court shall retain jurisdiction of this case until termination of the Consent Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms as modified by this Consent Decree Modification, or to resolve disputes in accordance with Consent Decree Section XX (Retention of Jurisdiction/Dispute Resolution).

Entered this _____ day of _____ 2015,

United States District Judge
Southern District of Texas


FOR THE UNITED STATES OF AMERICA:

Date


JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

2015-09-10

Date


MICHAEL T. DONNELLAN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-4226
Facsimile: (202) 514-0097
Email: michael.donnellan@usdoj.gov

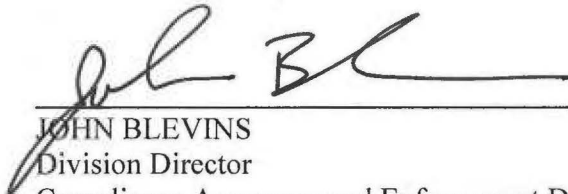
KENNETH MAGIDSON
United States Attorney
Southern District of Texas

KEITH EDWARD WYATT
Assistant United States Attorney
Texas Bar No. 22092900
Federal Bar No. 3480
1000 Louisiana Street, Suite 2300
Houston, Texas 77002
Telephone: (713) 567-9713
Fax: (713) 718-3303
Email: keith.wyatt@usdoj.gov

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

9.3.15

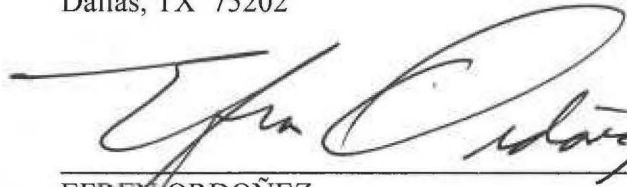
Date



JOHN BLEVINS
Division Director
Compliance Assurance and Enforcement Division
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200 (6EN-W)
Dallas, TX 75202

9/8/15

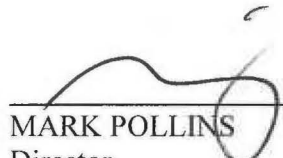
Date



EFREN ORDONEZ
Office of Regional Counsel
U.S. EPA, Region 6
1445 Ross Ave., Suite 1200 (6EN-EW)
Dallas, TX 75202
Telephone: (214) 665-2181
Email: Ordonez.Efren@epa.gov

8-25-15

Date



MARK POLLINS
Director
Water Enforcement Division (2243A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

FOR THE STATE OF TEXAS:

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

9/23/2015
Date

Jane E. Atwood
JANE E. ATWOOD
Assistant Attorney General
Texas State Bar No. 00796144
S. Dist. No. 310525
Office of the Attorney General
Environmental Protection Division (MC-066)
P.O. Box 12548
Austin, Texas 78711-2548
Phone: (512) 463-2012
Fax: (512) 320-0911

FOR HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 50:

9-1-15
Date


MARTIN LEMON
President
Harris County Municipal Utility District No. 50
Board of Directors

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA and

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HARRIS COUNTY MUNICIPAL UTILITY
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Attachment A

WORK PLAN

Harris County MUD 50

SSO – Work Plan

Based on a study completed by Dannenbaum Engineering Corporation in 2011, a rehabilitation construction contract is being publicly advertised for bid. The construction contract will be completed in two phases.

1. Phase I consists of cleaning and televising investigation of all of the 15-inch, 12-inch, 10-inch, select 8-inch and select 6-inch sanitary sewer lines though out the District. After the cleaning and televising is complete, the Construction Contractor will meet with the Engineer and the Televising Contractor. At this meeting the final locations of all rehabilitation work will be agreed upon. Any cross connections will be eliminated. All identified defects in need of rehabilitation shall be repaired. The repairs shall progress in order of severity until the required work is complete. Within thirty (30) days after completion of the cleaning and televising investigation, HCMUD50 shall submit a report to EPA for review specifying the results of the investigation and identifying all of the repairs that shall be implemented. Additionally, the Report shall highlight any changes to the Preliminary list of work to be performed, listed below.
2. Phase II consists of the rehabilitation work outlined in Phase I. Below is a preliminary list of the work to be performed and is subject to change based on the findings of the Phase 1 cleaning and televising investigation, so (i) work items not previously anticipated may be added, (ii) work item(s) below may be modified, or (iii) work item(s) below may not be done if the finding indicate that there is no defect that requires rehabilitation.
 - a. **Detach Storm Sewer Connection from Sanitary System and Tie into Storm Drain, complete in place:** along Red Oak and along Locust. This cross connection will be eliminated from the system.
 - b. **Point Repair on 15-inch Gravity Sewer, complete in place:** Along Oak
 - c. **Point Repair on 12-inch Gravity Sewer, complete in place:** Along Magnolia
 - d. **Point Repair on 10-inch Gravity Sewer, complete in place:** Along Milo, along Melville, and along Zinn
 - e. **Point Repair on 8-inch Gravity Sewer, complete in place:** Along FM 1942, along Coy, along Arcadian, along Barrett, along St. Charles, along Cypress, back lot between Magnolia and Chambers, along Red Oak, along Penn Ave, along Magnolia, along Ridge Drive, along Reuben White, and along Cottontail
 - f. **Point Repair on 6-inch Gravity Sewer, complete in place:** along Alma
 - g. **Point Repair on 4-inch Gravity Sewer, complete in place:** along Dreamland
 - h. **Uncover and Raise MH Lid to Existing Pavement Level, complete in place:** Manhole 186
 - i. **Repair Manhole Wall or Cone, complete in place:** Manhole 65A, Manhole 67, Manhole 99A, Manhole 52, Manhole 137A, Manhole 143, Manhole 143A, Manhole 144, Manhole 3, and Manhole 168B
 - j. **Replace 4-inch Cleanout Cap Including Threaded Sleeve, complete in place:** Along Magnolia, along Elm, and along Cypress
 - k. **Reset and Seal Manhole Rings, complete in place:** Manhole 90, Manhole 136, Manhole 146, Manhole 126C, Manhole 122, Manhole 85, Manhole 167B, Manhole 141A, Manhole 142, Manhole 161, Manhole 162, and Manhole 177B

The Projected Schedule for the SSO work outlined above is as follows:

- Contract Award/Execution 08/31/2015
- Construction Completion 12/31/2016

Wastewater Treatment Plant Project - Work Plan

The District has entered into a contract with Dannenbaum Engineering to Permit and Design Phase I of a new Wastewater Treatment Plant (WWTP) to serve the most northern part of Harris County MUD No. 50. The District is currently served by a wastewater treatment plant on the south side of the District which is approaching design capacity. The new plant would relieve the existing plant of about 35% of the flow it currently receives. The proposed Phase I WWTP is a 90,000 gallon per day steel package plant to be owned by the District. The design and construction of Phase II is not part of this package.

Permit: The proposed permit for Phase I is 90,000 gallons per day with an ultimate capacity of 180,000 gallons per day. Permit limits requested are to match those of the existing WWTP.

Treatment Process: The proposed treatment plant process is a conventional activated sludge process common to the area. The Plans and Specifications will be approved by TCEQ and/or TWDB prior to the start of construction. The plant will also include an effluent lift station and force main to pump the treated plant effluent to the proposed discharge point. Currently Phase II is planned to be an additional 90,000 gallon per day steel package plant. The construction of Phase II is dependent on the development with in the service area of the plant, and is not projected within the next five years.

Location: The proposed WWTP location is on District owned property approximately 0.21 miles south of FM 1942 and East of the San Jacinto River Authority (SJRA) Canal (that runs through the District). Plant access will be from an all-weather road along FM 1942 approximately ½ mile east of the intersection of Crosby-Lynchburg and FM 1942. The WWTP will be located within the District boundaries.

Service Area: All existing flows along FM 1942 east of the SJRA Canal will be diverted to the proposed WWTP. This will include the on-going development of Kodiak Crossing in the northern most section of the District. Additional flows maybe added over time depending on development within the District.

Service Area Work: The flows heading west across the SJRA Canal will be diverted into a proposed gravity line flowing east along FM 1942 several hundred feet to the plant access driveway. From there a gravity line will be installed south along the all-weather road to a proposed influent lift station. The proposed influent lift station will then lift the flow into the start of the WWTP. No additional work will be completed on the existing gravity sewer system as part of this project.

The Projected Schedule for the WWTP work outlined above is as follows:

- WWTP Design 11/30/2015
- Contract Award/Execution 02/28/2016
- Construction Completion 11/30/2016